

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27147

FILE: B-213494

DATE: January 4, 1984

MATTER OF: Co-Mate Construction Company

DIGEST:

Where all bidders were requested to extend bid acceptance period until October 31 to allow time for preaward surveys and to ascertain availability of funding, low bidder only extended its bid until October 17, and award was made to other than low bidder on October 30, low bidder is not considered an interested party for purpose of maintaining a bid protest under GAO Bid Protest Procedures since it was no longer eligible for award after its bid acceptance period expired on October 17.

Co-Mate Construction Company (Co-Mate) protests award of a contract for repair of a runway at Tinker Air Force Base by the Department of the Air Force to Hatcher Paving Company pursuant to invitation for bids No. F34650-83-B-0145. Co-Mate charges that the Air Force should have awarded it the contract because Co-Mate was the lowest responsive, responsible bidder. Co-Mate contends that the contracting officer improperly found it to be nonresponsive based upon a United States Department of Transportation (DOT) Inspector General's report which was the subject of litigation in the United States Court for the Western District of Oklahoma at the time the determination of Co-Mate's nonresponsibility was made.

The protest is dismissed.

The record shows that three bids were received by the September 28, 1983, bid opening in response to the invitation and that Co-Mate's bid was the lowest of the three. On September 29, the contracting officer asked all three bidders to extend their bid acceptance periods from September 30 to October 31 so that necessary preaward surveys could be conducted and because funding was not yet available. Co-Mate responded by letter of September 30, but only extended its bid acceptance through October 17; the other two bidders extended their bids until October 31 as requested. Shortly after this request for an extension, the

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contracting officer became aware of a DOT investigation into the relationship between Co-Mate and its officers and Metropolitan Enterprises, Inc., and its officers. Ultimately, the contracting officer found Co-Mate to be nonresponsible based upon questions as to Co-Mate's integrity stemming in part from the DOT Inspector General's report which indicated that Co-Mate was related to and possibly the successor of Metropolitan Enterprises, Inc., which was convicted along with its president in the United States District Court for the Western District of Oklahoma for violation of a federal statute in 1982. Co-Mate brought an action in the District Court in which it sought a preliminary injunction against the Federal Highway Administration which had held Co-Mate to be nonresponsible in connection with award of certain federally funded projects. A hearing in this case was set for October 27.

On October 17, Co-Mate contacted the contracting officer to find out if funding was yet available; Co-Mate did not offer to extend its bid acceptance period, however. On October 21, Co-Mate protested the proposed award to our Office. On October 30, the Air Force awarded the contract to Hatcher Paving Company.

Co-Mate contends that it was ready, willing, and able to extend its bid beyond the October 17 date it had initially specified. In its protest letter, Co-Mate indicated that it would have extended its bid until the end of that week (October 21). However, Co-Mate indicated that if award were not made by the end of that week, it would have difficulty in readying its equipment for the scheduled startup date of November 3.

We find that Co-Mate is not an interested party entitled to a bid protest decision on the merits of its protest. Co-Mate's original bid extension was only until October 17; its protest letter, even if allowed to extend the bid acceptance period, would extend only until October 21. In either case, Co-Mate would not be eligible for award which was made on October 30. By limiting its bid acceptance period to earlier than the requested October 31 date, Co-Mate essentially refused to be considered for award after October 17. Since Co-Mate was no longer eligible for award, it cannot be considered an interested party eligible

to maintain a protest before our Office. See S. J. Groves & Sons Company, B-207172, November 9, 1982, 82-2 CPD 423; Risi Industries, Inc.; Westmont Industries, B-191024, April 27, 1978, 78-1 CPD 329; Don Greene Contractors, Inc., B-198612, July 28, 1980, 80-2 CPD 74.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel